

REMARKS

In the non-final Office Action, the Examiner objects to the drawings; rejects claims 1-30 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite; rejects claims 1, 2, 4-6, 9, 11, and 12 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,740,826 to Vevin et al. (hereinafter "NEVIN"); rejects claims 1, 2, 4, and 9 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,892,742 to Wang (hereinafter "WANG"); rejects claims 1-17, 23-25, 29, and 30 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 4,886,083 to Gamache (hereinafter "GAMACHE") in view of U.S. Patent No. 6,289,839 to Phillips (hereinafter "PHILLIPS"); rejects claims 18-22 under 35 U.S.C. § 103(a) as allegedly unpatentable over GAMACHE in view of PHILLIPS and further in view of U.S. Patent No. 4,585,020 to Masuda et al. (hereinafter "MASUDA"); and indicates that claims 26-28 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph and to include all the features of the base claim and any intervening claims. Applicant respectfully traverses these rejections.

By way of the Amendment, Applicant amends claim 1 to substantially incorporate the features previously recited in claims 15 and 16; amends claims 1, 3-5, 7, 15, 27, and 28 to improve form; and adds new dependent claims 32-34. No new matter has been added by the present Amendment. Claims 1-5, 7-24, 27-30, and 32-34 are pending.

Information Disclosure Statements

Applicant submitted an Information Disclosure Statements (IDSs) on July 11, 2006; on January 4, 2007; on April 14, 2008; and on January 9, 2009. The Examiner returned initialed copies indicating that the references were considered for the IDSs submitted on July 11, 2006; on

April 14, 2008; and on January 9, 2009. However, for the IDS submitted on January 9, 2009, the Examiner did not initial or cross out the reference under the Other Documents section of the PTO-1449 form included with the IDS. Furthermore, the Examiner did not return an initialed copy of the IDS submitted on January 4, 2007. Applicant respectfully requests that the Examiner return copies of the IDS submitted on January 4, 2007 and the IDS submitted on January 9, 2009, with all the references initialed, with the next Office Action.

Objection to the Drawings

The drawings stand objected under 37 C.F.R. 1.84(h)(1). Specifically, the Examiner alleges that the exploded views fail to show brackets in order to show the relationship or order of assembly of various parts (Office Action, p. 2). Without acquiescing in the Examiner's rejection, Applicant filed proposed amendments to original Figs. 5, 7, 8, and 10 in the Amendment filed on May 19, 2009. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the objection to the drawings and acceptance of the drawings are presented in the replacement drawing sheets attached with the Amendment filed on May 19, 2009.

Rejection under 35 U.S.C. § 112, 2nd paragraph

Pending claims 1-5, 7-24, and 27-30 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection.

With respect to claim 1, the Examiner alleges that the phrase "adapted to be releasably connectable" fails to recite a cooperative relationship between the hoop member and the frame

(Office Action, p. 3). Without acquiescing in the Examiner's rejection of claim 1, and merely to expedite prosecution, Applicant amended claim 1 to address the Examiner's concern in the Amendment filed on May 19, 2009.

With respect to claim 5, the Examiner alleges that the phrase "adapted to be hingedly connectable" fails to recite a cooperative relationship between the hoop member and the frame (Office Action, p. 3). Without acquiescing in the Examiner's rejection of claim 5, and merely to expedite prosecution, Applicant has amended claim 5 to address the Examiner's concern in the Amendment filed on May 19, 2009.

With respect to claim 1, the Examiner alleges that the phrase "such that" renders the claim indefinite, because it is unclear whether the features following the phrase are part of the claimed invention (Office Action, p. 3). Without acquiescing in the Examiner's rejection of claim 1, and merely to expedite prosecution, Applicant has amended claim 1 to address the Examiner's concern in the Amendment filed on May 19, 2009.

With respect to claim 25, the Examiner alleges an inconsistency with the terminology of claim 1 (Office Action, p. 3). Applicant has canceled claim 25 in the Amendment filed on May 19, 2009, thereby rendering this rejection moot.

With respect to claim 6, the Examiner alleges that the phrase "two diagonally extending hoop members" lacks antecedent basis (Office Action, p. 3). Applicant has canceled claim 6 in the Amendment filed on May 19, 2009, thereby rendering this rejection moot.

Accordingly, Applicant respectfully requests that the rejection of claims 1-5, 7-24, and 27-30 under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

Rejection under 35 U.S.C. § 102(b) based on NEVIN

Pending claims 1, 2, 4, 5, 9, 11, and 12 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by NEVIN. Applicant respectfully traverses this rejection.

A proper rejection under 35 U.S.C. § 102 requires that a reference teach every aspect of the claimed invention. Any feature not directly taught must be inherently present. See M.P.E.P. § 2131. NEVIN does not disclose the combination of features recited in Applicants' claims 1, 2, 4, 5, 9, 11, and 12.

For example, amended independent claim 1 is directed to a portable vehicle cover. The portable vehicle cover includes a base frame; a plurality of transversely extending hoop members, each hoop member being releasably connectable with the base frame, where the plurality of transversely extending hoop members includes at least two hoop members that substantially extend diagonally across the base frame in a cruciform orientation; at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads; and a flexible cover engagable with the plurality of transversely extending hoop members to form a weather shield for the vehicle. NEVIN does not disclose or suggest this combination of features.

For example, NEVIN does not disclose or suggest at least two hoop members that substantially extend diagonally across the base frame in a cruciform orientation, as recited in amended claim 1. The Examiner relies on hoops 14.3 and 14.4 of Fig. 1 of NEVIN for allegedly

disclosing this feature (Office Action, p. 4). Applicant disagrees with the Examiner's interpretation of NEVIN.

Hoops 14.3 and 14.4 of Fig. 1 of NEVIN are described at col. 3, lines 39-45 of NEVIN.

This section of NEVIN discloses:

The canopy supports 14.1 to 14.3 are mounted directly on the track assemblies 20, in such a manner that each of them is pivotally displaceable about a transversely extending pivot axis. This enables them to move from a folded condition in which they lie flat against the front end member 24, to an unfolded or erected condition in which they are in the position illustrated in Fig. 1.

This section of NEVIN discloses that canopy supports 14.1 to 14.3 are pivotally displaceable about a transverse pivot axis. Thus, based on this description, and as can be seen in Fig. 1 of NEVIN, the canopy supports of NEVIN are attached to front end member 24 and do not extend, and are not even orientable, in a diagonal or cruciform orientation. Therefore, this section (or any other section) of NEVIN does not disclose or suggest at least two hoop members that substantially extend diagonally across the base frame in a cruciform orientation, as recited in amended claim 1.

Furthermore, NEVIN does not disclose or suggest at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads, as also recited in claim 1. A feature similar to this feature was previously recited in claims 15 and 16. The Examiner did not reject claims 15 and 16 under 35 U.S.C. § 102(b) based on NEVIN, and therefore the Examiner appears to admit that NEVIN does not disclose this feature. Nevertheless, as can be seen in Figs. 1-13 of NEVIN, NEVIN does not disclose or suggest vehicle tire engaging pads that are adjustably rotatable, let alone adjustable rotatable about an

axis perpendicular to a plane defined by a base frame. Therefore, this section of NEVIN does not disclose or suggest at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads, as also recited in claim 1.

For at least the foregoing reasons, claim 1 is not anticipated by NEVIN. Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 102(b) based on NEVIN be reconsidered and withdrawn.

Claims 2, 4, 5, 9, 11, and 12 depend from claim 1. Therefore, these claims are not anticipated by NEVIN for at least the reasons set forth above with respect to claim 1. Accordingly, Applicant respectfully requests that the rejection of claims 1, 2, 4, 5, 9, 11, and 12 under 35 U.S.C. § 102(b) based on NEVIN be reconsidered and withdrawn.

Rejection under 35 U.S.C. § 102(e) based on WANG

Claims 1, 2, 4, and 9 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by WANG. Applicant respectfully traverses this rejection.

A proper rejection under 35 U.S.C. § 102 requires that a reference teach every aspect of the claimed invention. Any feature not directly taught must be inherently present. See M.P.E.P. § 2131. WANG does not disclose the combination of features recited in Applicants' claims 1, 2, 4, and 9.

For example, amended independent claim 1 is directed to a portable vehicle cover. The portable vehicle cover includes a base frame; a plurality of transversely extending hoop

members, each hoop member being releasably connectable with the base frame, where the plurality of transversely extending hoop members includes at least two hoop members that substantially extend diagonally across the base frame in a cruciform orientation; at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads; and a flexible cover engagable with the plurality of transversely extending hoop members to form a weather shield for the vehicle. WANG does not disclose or suggest this combination of features.

For example, WANG does not disclose or suggest at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads, as recited in amended claim 1. This feature is similar to features previously recited in claims 15 and 16. The Examiner did not reject claims 15 and 16 under 35 U.S.C. § 102(e) based on WANG. Therefore, the Examiner appears to admit that WANG does not disclose this feature.

Nevertheless, Applicant submits that WANG does not disclose or suggest this feature. For example, WANG is directed to a tent. WANG does not disclose or suggest vehicle tire engaging pads of any kind. Therefore, WANG does not disclose or suggest at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate

vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads, as recited in amended claim 1.

For at least the foregoing reasons, claim 1 is not anticipated by WANG. Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 102(e) based on WANG be reconsidered and withdrawn.

Claims 2, 4, and 9 depend from claim 1. Therefore, these claims are not anticipated by WANG for at least the reasons set forth above with respect to claim 1. Accordingly, Applicant respectfully requests that the rejection of claims 2, 4, and 9 under 35 U.S.C. § 102(b) based on WANG be reconsidered and withdrawn.

Rejection under 35 U.S.C. § 103(a) based on GAMACHE and PHILLIPS

Pending claims 1-5, 7-17, 23, 24, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over GAMACHE in view of PHILLIPS. Applicant respectfully traverses this rejection.

Amended independent claim 1 is directed to a portable vehicle cover. The portable vehicle cover includes a base frame; a plurality of transversely extending hoop members, each hoop member being releasably connectable with the base frame, where the plurality of transversely extending hoop members includes at least two hoop members that substantially extend diagonally across the base frame in a cruciform orientation; at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the

portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads; and a flexible cover engagable with the plurality of transversely extending hoop members to form a weather shield for the vehicle. GAMACHE and PHILLIPS, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, GAMACHE and PHILLIPS do not disclose or suggest at least two hoop members, being releasably connected with a base frame, that substantially extend diagonally across the base frame in a cruciform orientation, as recited in amended claim 1. The Examiner relies on Fig. 3 of GAMACHE for allegedly disclosing this feature (Office Action, p. 5). Applicant disagrees with the Examiner's interpretation of GAMACHE.

Fig. 3 of GAMACHE discloses a vehicle in place within a frame, with the vehicle cover fully collapsed. Fig. 3 of GAMACHE does not disclose or suggest any members of the vehicle cover of GAMACHE that extend diagonally across the frame. Rather, all the members of the vehicle cover of GAMACHE extend transversely across the frame. Furthermore, the members of the vehicle cover of GAMACHE are not releasably connected to a base frame. Therefore, Fig. 3 (or any other section) of GAMACHE does not disclose or suggest at least two hoop members, being releasably connected with a base frame, that substantially extend diagonally across the base frame in a cruciform orientation, as recited in amended claim 1.

In fact, the Examiner admits that GAMACHE does not disclose this feature and relies on item 36 of PHILLIPS for allegedly disclosing this feature (Office Action, p. 6). Applicant disagrees with the Examiner's interpretation of PHILLIPS.

Item 36 of PHILLIPS, depicted in Fig. 2 and Fig. 3 of PHILLIPS, represents flexible rods of a portable collapsible ventilator (see col. 3, line 48 of PHILLIPS). As can be seen in Fig. 1 of PHILLIPS, flexible rods 36 are secured in place with webbing 30, which reinforces base 29 of

fabric cover 14 (see col. 3, lines 20-21 of PHILLIPS). Therefore, PHILLIPS does not disclose or suggest a base frame. This can be clearly seen in Fig. 2 of PHILLIPS. Rather, flexible rods 36 of PHILLIPS are held in place with fabric. Therefore, PHILLIPS does not disclose or suggest at least two hoop members, being releasably connected with a base frame, that substantially extend diagonally across the base frame in a cruciform orientation, as recited in amended claim 1.

Furthermore, GAMACHE and PHILLIPS do not disclose or suggest at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads, as also recited in amended claim 1. The Examiner relies on item 72 and col. 4, lines 42-48 of GAMACHE for allegedly disclosing vehicle tire pads (Office Action, p. 7). Applicant submits that this section (or any other section) of GAMACHE does not disclose or suggest the above-noted feature of claim 1.

Col. 4, lines 42-48 of GAMACHE, which describe item 72 of GAMACHE, disclose:

FIG. 5 shows a frame 28 with spacer ground strips 106 between flanges 72. Although not shown, the spacer ground strips may be between the ground rails. The spacer ground strips are used if necessary, to resist tendency of the ground-rails to move apart under lateral force from prestressed support bar/spacer bar assemblies.

This section of GAMACHE discloses a frame, spacer ground strips 106, and flanges 72. The Examiner relies on flanges 72 as allegedly corresponding to the vehicle tire engaging pads, as recited in claim 1. However, this section (or any other section) of GAMACHE does not disclose or suggest that flanges 72 are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, as would be required by amended claim 1, based on the Examiner's interpretation of GAMACHE. Rather,

flanges 72 of GAMACHE are rotatably attached by pivot 108 to guide-rail 36, and are thus slidably moved along ground-rail 36 (see col. 4, lines 20-23 of GAMACHE). Therefore, this section (or any other section) of GAMACHE does not disclose or suggest at least two hingedly connected vehicle tire engaging pads, where the vehicle tire engaging pads are adjustably rotatable about an axis perpendicular to a plane defined by the base frame to accommodate vehicles having different wheelbase lengths, and where the vehicle tire engaging pads secure the portable vehicle cover with respect to a vehicle when the vehicle is positioned on the tire engaging pads, as also recited in amended claim 1.

The disclosure of PHILLIPS does not overcome the deficiency in the disclosure of GAMACHE set forth above with respect to the above-noted feature of amended claim 1. For example, PHILLIPS is directed to a portable, collapsible ventilator, and therefore does not disclose or suggest vehicle tire pads of any kind.

Therefore, even if GAMACHE were to be combined with PHILLIPS, the combination would not disclose or suggest each of the features of claim 1. Further, even if for the sake of argument, the combination of GAMACHE and PHILLIPS could be fairly construed to disclose or suggest each of the features of claim 1, Applicants assert that the reasons for combining GAMACHE and PHILLIPS do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining GAMACHE and PHILLIPS, the Examiner alleges (Office Action, p. 6):

It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the portable cover of Gamache having at least two central hoop members being mounted substantially extending diagonally across each other and across the base frame in a cruciform orientation and being jointed by a central hub as taught by Phillips for providing a portable cover having a higher inner space area with a stronger center support formed thereon.

Applicant submits that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Applicant relies upon KSR International Co. v. Teleflex Inc., 550 U.S. 398, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In this case, no such articulated reasoning has been provided with respect to claim 1.

Furthermore, if the Examiner relies on a reference under 35 U.S.C. § 103, the reference must be analogous art. Applicant submits that PHILLIPS is directed to a portable, collapsible ventilator, which is not analogous art in relation to a vehicle cover. For example, the Examiner alleges that one of ordinary skill in the art would use the disclosure of PHILLIPS to modify the vehicle cover of GAMACHE to provide a higher inner space area with a strong center support formed thereon. Applicant respectfully submits that one of ordinary skill in the art would not look upon a collapsible ventilator to improve a vehicle cover.

For at least the foregoing reasons, claim 1 is patentable over GAMACHE and PHILLIPS, whether taken alone or in any reasonable combination. Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 103(a) based on GAMACHE and PHILLIPS be reconsidered and withdrawn.

Pending claims 2-5, 7-17, 23, 24, 29, and 30 depend from claim 1. Therefore, these claims are patentable over GAMACHE and PHILLIPS, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly,

Applicant respectfully requests that the rejection of claims 2-5, 7-17, 23, 24, 29, and 30 under 35 U.S.C. § 103(a) based on GAMACHE and PHILLIPS be reconsidered and withdrawn.

Rejection under 35 U.S.C. § 103(a) based on GAMACHE, PHILLIPS, and MASUDA

Claim 18-22 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over GAMACHE in view of PHILLIPS and further in view of MASUDA. The rejection is respectfully traversed.

Claims 18-22 depend from claim 1. Without acquiescing in the Examiner's rejection of claims 18-22, Applicant submits that the disclosure of MASUDA does not overcome the deficiencies in the disclosures of GAMACHE and PHILLIPS set forth above with respect to claim 1. Therefore, these claims are patentable over GAMACHE, PHILLIPS, and MASUDA, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly, Applicant respectfully requests that the rejection of claims 18-22 under 35 U.S.C. § 103(a) based on GAMACHE, PHILLIPS, and MASUDA be reconsidered and withdrawn.

New Claims

New dependent claims 32-34 depend from claim 1. Therefore, these claims are patentable over the cited references for at least the reasons set forth above with respect to claim 1.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests the Examiner's reconsideration of the application and the timely allowance of the pending claims.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise which could be eliminated through discussions with Applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order to expedite prosecution of this application.

As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such assertions (e.g., whether a reference constitutes prior art, reasons to modify a reference and/or to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY & HARRITY, LLP

By: /Viktor Simkovic, Reg. No. 56,012/
Viktor Simkovic
Registration No. 56,012

Date: June 10, 2009
11350 Random Hills Road
Suite 600
Fairfax, Virginia 22030
Main: (571) 432-0800
Direct: (571) 432-0899
Customer Number: 26615